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ABSTRACT

The purposes of the study were to: (1) identify the issues addressed at the due process hearings in this southeastern state, and (2) examine the implications for educators. Due process hearing decisions rendered since 1994, a total of 31 were reviewed. Results of the study showed that student placement was the most common issue for which a due process hearing was called. The second most common issue was the individualized education program. This was followed by evaluation, private schooling, implementation of behavior modification programs, least restrictive environment, free appropriate public education, suspension/expulsion, child find, and compensatory education. The range of issues addressed at the hearings ranged from 1 to 7 with a mean of 2.6. Although it was difficult to compute accurately the number of hearings won by the petitioner or the defendant because sometimes the petitioner prevailed on one issue and the defendant prevailed on another; in a majority of decisions, the parents prevailed. Reasons for due process hearings on these different issues are discussed, and recommendations are made for including a course in special education laws and regulations at the preservice level and/or incorporating the appropriate regulations in relevant courses. (CR)

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ANALYSIS OF IMPARTIAL DUE PROCESS HEARINGS: IMPLICATIONS FOR EDUCATORS

presented

by

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ABSTRACT

The purposes of the study were to (1) identify the issues addressed at the due process hearings in this southeastern state, and (2) examine the implications for educators. Due process hearing decisions rendered since 1994, a total of 31, were reviewed. Issues for which each due process hearing was requested were noted. They were categorized and statistically analyzed.
Results showed that placement was the most common issue for which a due process hearing was called. The second most common issue was the individualized education program. This was followed by evaluation, private schooling, implementation of a behavior modification program, least restrictive environment, free appropriate public education, suspension/expulsion, child find, and compensatory education. These results have significant implications for educators which are discussed.

Special education received the biggest boost in the 1960s. This came about largely because of the political position of a family which had a direct association with a disability. The 1960s are now history. In the last four decades the country has experienced many changes. Some of these significant changes are economic, political, social/cultural, and philosophical in nature. Each of them has an effect on special education particularly in regard to its funding.

Since the beginning of 1990s the Ross Perot phenomenon has created a national awareness of huge budget deficits in the country. The U. S. Congress and other politicians are continually under pressure to balance the budget and have agreed to do so in the next few years. Therefore, the federal support of special education is becoming increasingly limited.

The Individuals with Disabilities Education Act (IDEA), after a long delay and debate, was finally reauthorized by the U. S. Congress in May 1997. The preamble of the Act describes the demographic changes in the country which illuminate the extent of diversity in the U. S. population. From this section it appears that the U. S. Congress is now feeling the pressure of distributing federal resources to all students rather than giving them preferentially to students with disabilities.

Educational reform is sweeping the country. The reform movement is heavily influenced by the concept of accountability. In education, accountability is largely understood to mean students' performance on different tests. Therefore, in each state the emphasis of the reform is on student outcomes. Student testing is a hot topic in education both at the state and national levels. The 1997 IDEA mandates the inclusion of students with disabilities in statewide assessment.

The purpose of the Education for All Handicapped Children's Act of 1975 was the provision of an appropriate education in the least restrictive environment. The Individuals with Disabilities Education Act of 1997 appears to be more favorable to inclusion. Initially, federal special education dollars could only be used to provide FAPE to students with disabilities. The 1997 IDEA allows some flexibility.

Special educators themselves are philosophically not seeing eye to eye. The debate over the regular education initiative (REI) has now been replaced by the debate between the least restrictive environment (LRE) and inclusion. By some, these philosophical differences are being perceived as divisive. The field of special education is seen as a house divided. Perhaps this perception is contributing to the weakening of support for special education.

The argument justifying special education as a moral and ethical issue is becoming weak in the present political, economic, and social climate of the country. At this critical juncture there is a renewed need for advocacy on behalf of children with disabilities by every stakeholder and specially by the parents. The important role played by parents in the evolution of special education cannot be over emphasized. It was the parents of students with disabilities who filed and won the Mills v. Board of Education of the District of Columbia case. It was the parents who took on the state of California in Diana and Larry P. The Pennsylvania Association for Retarded Citizens, which filed and won the landmark PARC v. the Commonwealth of Pennsylvania, was primarily a parents' organization. These are the cases which provided an impetus for the enactment of the Education for All Handicapped Children Act of 1975, now known as Individuals with Disabilities Education Act or IDEA. Parents of students with disabilities have played a vital

role in the history of special education. The future of special education is, to a great extent, dependent on their continued support in the future. Special education professionals have a responsibility to make sure that they maintain and strengthen their partnership with the parents in the true spirit of IDEA. Parents' continued support is perhaps somewhat dependent on their satisfaction with special education. They, like their children, are consumers of special education.

Purpose

The general goal of this study was to assess the extent of consumers' (who in this case were assumed to be the students with disabilities and their parents) satisfaction with special education programs and services provided to students with disabilities in this southeastern state, and to recommend changes in special education teacher preparation programs, if needed. This assessment was performed through an analysis of due process hearings conducted in the state. Specific objectives were to (1) identify the issues for which due process hearings were requested and which were addressed at the due process hearings, (2) note the rulings of the hearing officers on those issues, and, (3) examine their implications for educators.

Methodology

In the last few years the Department of Education in this southeastern state has begun to provide the hearing officers copies of the decisions rendered by the impartial due process hearing officers in the state. All identifiable information is deleted by the department prior to copying the decisions for distribution. Copies of 31 decisions received by this investigator as of the end of March 1997 were reviewed. Of these, 27 due process hearings were requested by the parents and four were requested by the local education agencies. From each decision the section titled "Issues at the Hearing" was used to develop a list of hearing issues. This list resulted in a total of 80 issues, represented in Table 1. Many of these issues appeared in more than one hearing. They

Insert Table 1 about here

were consolidated into one category. This resulted in a total of 10 categories of issues. These ten categories by their frequencies and percentages are presented in Table 2.

Insert Tables 2 about here

Analysis of data

From the categories of issues contained in Table 2 it is clear that in this southeastern state the issue of placement was the most frequent (19) one at the due process hearings. It was an issue in 61% of the due process hearings. In labeling the categories of issues this researcher used the language exactly as it was used in the request for a due process hearing. Whenever placement was mentioned separately as an issue, it was counted as a placement issue. The fact of the matter is that the least restrictive environment may also be considered a placement issue. Placement in a private school is certainly a placement issue. And, the issue of a continuum of educational

alternatives is also a placement issue. If all of them are consolidated in one category then the issue of placement was the single most prevalent issue in this southeastern state. Generally the issues associated with placement were inappropriate placement, placement in the least restrictive environment, unilateral change in placement, placement in a private school setting, etc.

The second most common (16) issue heard by the due process hearing officers in this southeastern state related to the individualized education program or the IEP. In 52% of the due process hearings, an IEP was a point of disagreement between the two parties. Generally, the issues associated with the IEP were inappropriate IEP, incomplete IEP, inappropriate IEP goals and/or objectives, vague IEP goals (Student will improve his/reading ability), IEP goals not matching the evaluation data, IEP objectives not matching the IEP goals, absence or lack of a transition plan in the IEP, failure to develop an IEP, failure to implement an IEP, etc.

Evaluation was the third most common (11) issue. Issues associated with evaluations were inappropriate evaluation (not conducted by a multi-disciplinary team), failure to evaluate, failure to evaluate in all areas of suspected disability, independent evaluation, reimbursement for independent evaluation, untimely evaluation, incomplete evaluation, etc.

Private school placement in this southeastern state was also a common (10) issue. Associated issues were provision of related services (sign language interpreter, speech language therapy) at a private school, provision of transportation to a private school, reimbursement for placement in a private school, unilateral placement in a private school, etc.

Behavior modification program was the next most frequent (7) issue heard by the due process hearing officers in this southeastern state. Failure to develop a behavior modification program, failure to implement a behavior modification program, failure to comply with a behavior modification program, and failure to hire a behavior consultant were the specific issues associated with this category.

Less common (7) was the issue of education in the least restrictive environment. The specific issues were failure to provide the least restrictive environment, failure to provide support services in the least restrictive environment, placement in a residential program, failure to provide a continuum of educational alternatives, etc.

The issue of a free appropriate public education (FAPE) was the next one (4) in order. Specifically the issues were inability of the local education agency (LEA) to provide FAPE and failure to provide FAPE. The frequencies of the next three issues are not very high. Suspension/expulsion was an issue in three hearings. Specific issues in this category were failure to conduct manifestation determination, behavior related to the disability, and failure to comply with procedural safeguards. Twice the hearing issue was LEA's failure to conduct child find activities. Last but not least, one due process hearing was held specifically to address the issue of compensatory education.

The range of issues addressed at a hearing is from 1 to 7 with a mean of 2.6. It is difficult to accurately compute the number of hearings won by the petitioner or the defendant because sometime the petitioner prevails on one issue and the defendant prevails on the other issue at the same hearing. On the whole, in a majority of decisions the parents prevailed.

Discussion

From this study it is clear that placement was the most disputed area of conflict between the parents of students with disabilities and the local education agencies. In reviewing the courses of study required in the special education teacher preparation programs educators can examine whether this topic is appropriately covered. Do the school authorities find themselves often in conflict with the parents on this issue because educators do not have sufficient knowledge of what IDEA says about placement? Section 300 of IDEA regulations provide definitions of the major mandates of this law. The term placement is not included in this section. It is possible that because placement is not defined in this section of the regulations it is not fully explained to the pre service teachers during their preparation. In IDEA regulations the term placement appears in Subpart E which deals primarily with procedural safeguards. Subsection 300.533 and 300.551 of IDEA regulations provide placement procedures and continuum of alternative placements respectively. Subsection 300.552 is titled placement. It says, "Each public agency shall ensure that (a) the educational placement of each child with a disability - (1) Is determined at least annually; (2) Is based on his or her IEP, and (3) Is as close as possible to the child's home." This section actually does not state what a placement is. The regulation leaves the term placement open to different interpretations. It is possible that educators are either not quite clear as to what is meant by placement or that they take chances with it knowing that not every parent is going to ask for a due process hearing.

The next most common issue relates to the individualized education program. The IDEA regulations are quite explicit. Nearly every special education teacher preparation program in this southeastern state requires an IEP course at the pre service level. It is difficult to understand why there are so many IEP related violations. One plausible explanation is that the IEPs are demanding on the school authorities. They require considerable time. School personnel have consistently complained about the time spent on the IEPs. Perhaps it is the lack of time which contributes to incomplete IEPs and/or inappropriate IEPs. It is also possible that the IEP course taught at the preservice level does not emphasize the significance of the technical part of the IEPs.

Evaluation is the next most common area of conflict. Specific issues often seen in this area are failure to evaluate, failure to evaluate in all areas of suspected disability, failure to evaluate in a timely manner, etc. Again, IDEA regulations related to evaluation are quite clear and specific. Their frequent violations therefore cannot be attributed to lack of clarity. It is also noteworthy that these violations are again technical in nature. It is only seldom that the parents are dissatisfied with the outcome of the evaluation. Again, every special education teacher preparation program in this southeastern state requires an assessment course. It is possible that the thrust of this course is on what type of assessment to conduct, how to conduct it, and/or how to utilize the evaluation data in instructional planning. It is possible that this course does not include or does not emphasize the legal requirements related to evaluation.

The next most common issue at the hearings is behavior management. Local education agencies often fail to develop and/or implement an appropriate behavior management plan. Do the teachers know how to manage students? Or, do they recognize the need to develop a behavior management plan? Is the cause of teachers' failure to intervene in an effective manner

once again the lack of time? Another possible reason for LEAs' failure may be the philosophical argument over the issue of discipline which has already drawn quite a lot of national attention during the re authorization of IDEA. A behavior management course is taken by almost all of the special education preservice teachers and yet, according to the evidence and testimony presented at the hearings teachers are falling short in developing and/or implementing behavior management strategies in the classrooms.

The last issue is the LEAs' failure to provide a free appropriate public education (FAPE). This is an interesting one because directly or indirectly it becomes an issue in practically every due process hearing. If an IEP is not appropriate, is incomplete, is not developed, or is not implemented the provision of FAPE is argued. If a placement is inappropriate the provision of FAPE is questioned. If related services are not provided or if a behavior program has not been developed or implemented the student is alleged not to have received FAPE. Usually whether FAPE is raised as a separate issue or not it invariably becomes an issue at a hearing.

The problem may be due to the fact that the term "appropriate", unlike other terms in the law, is not defined in the regulations. It is left to the judgement of the IEP committee members. Given the fact that the school authorities and the parents generally have a different definition and perception of appropriate it is quite understandable that these two parties do not frequently see eye to eye on the provision of an appropriate education. The high frequency of this issue may be attributed to a difference of opinion.

Conclusions

According to the analysis performed in this study, placement was the most frequent issue for which due process hearings are requested in this southeastern state. An individualized education program ranked a close second. Evaluation and private school education were the next most frequent issues addressed by impartial due process hearing officers in this southeastern state. Behavior modification and the least restrictive environment received the same ranking. The last four issues in order were a free appropriate public education, suspension/expulsion, child find, and compensatory education. The results of this study may be valuable for special education teacher educators. It is appropriate for special education teacher educators to review their preparation programs particularly in these areas and determine whether some curricular modifications are warranted. Special education teacher preparation programs may consider including a course in special education laws and regulations at the preservice level and/or incorporating the appropriate regulations in the relevant courses and placing an emphasis on them.

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Table 1. Due Process Hearing Issues

1. Has the school district provided the student with a free, appropriate public education?
2. To determine if the school district is financially responsible for tuition that the parents have paid for the students' education in a private school setting.
3. Current and past educational placements.
4. Violations of due process related to timing of evaluations.
5. I.E.P. development and implementation.
6. Development and implementation of the behavior modification plan.
7. Consulting services in behavior modification.
8. To determine if the child is receiving an education in the least restrictive environment (LRE).
9. Whether or not the child should receive compensatory education for the time spent in an inappropriate placement.
10. Impartial due process hearing due to concerns for the determination of identification, placement, and an I.E.P.
11. To determine which party, parent or school, is responsible for the cost of tuition and transportation.
12. Failure of the district to conduct child find activities.
13. Failure of the district to conduct multi disciplinary evaluations.
14. Failure of the district to reimburse the county for providing student services.
15. Inadequate assessment testing.
16. Omission of the student from a scouting program, due to the teacher's refusal to comply with medication instructions by a treating physician.
17. Change in the placement of a student without an ARC meeting or an SBARC meeting.
18. Failure to comply with the behavior management plan incorporated in the IEP.
19. Whether or not written IEPs contained all agreements with regard to the individual education program of a referenced student, in that oral agreements were never reduced to writing and the signature of the parent was obtained on a blank form for each IEP.
20. What is the "stay-put" placement of a student during the pendency of the administrative remedy?
21. Request of the parent seeking placement for their child in a private residential school setting, due to the accusations of the public school's inability to provide an appropriate education for the student.
22. Parents disagree with the placement of their child in the resource room at an Elementary School, in order to remediate basic writing/reading needs. The parents believe the student's progress at the Learning Center (LC), justifies re-admission prior to going into the Resource Room. The issue is whether the student's educational program is appropriate and whether the Elementary is the appropriate LRE.
23. A student was reported by a teacher as possessing drug paraphernalia and suspended from school. The child's mother claims to have requested testing prior to the suspension, but was told to submit the request in writing. Before having a chance to do so the child was suspended.

24. Whether or not, the County School System has a legal obligation to fund a student's education at a private institute, until that student is emotionally and academically able to re-enter the public high school.
25. Whether or not, the County School System must reimburse the parents for the costs associated with the independent evaluations they performed on their child.
26. The parent objected to the placement of their child into a new program where special services for speech and language were implemented during school, unlike the previous after school program.
27. Whether the ARCs determination that the student's behavior was not a manifestation of his disability was inappropriately determined without consideration of the student's mental disability.
28. Whether a decision to permanently expel a student was made without adequate safeguards being afforded as required by the IDEA and the Kentucky Administrative Regulations.
29. Whether the school district made an inappropriate change of placement for the student during the period of expulsion without adequate due process.
30. To determine if the current placement is inappropriate and does not adequately address the IEP goals and objectives.
31. Whether the IEP is inappropriate, it fails to address vocational assessment, transitional placement, and the student's identified mental disability.
32. Whether the educational setting is in the LRE considering the following: availability of emergency medical services, space for the student's equipment, availability of therapy, and transportation to and from school.
33. Parents and the LEA disagree upon the contents of an IEP.
34. The school district failed to provide a neurological examination.
35. The school system failed to provide the necessary supportive services to maintain the student in the LRE, and thus deprived the student of a free appropriate public education.
36. Parents asserted that all records needed to implement a child's IEP were provided, but lost or misplaced by the school district.
37. A school district states that the parents refused to execute a release of residency to a new district in which they had recently moved, thus preventing the ARC to implement an existing IEP or develop a new one.
38. Unilateral change in placement.
39. Unilateral change in placement.
40. Unilateral change in placement.
41. Failure to provide a continuum of placement.
42. Failure to provide placement in accordance to the IEP.
43. Failure to provide education in the LRE.
44. Failure to assess the child in all areas of suspected disability.
45. Placement in special education program prior to developing an IEP.
46. Placement decision made by an individual rather than by the ARC.
47. Failure to provide related services.
48. Failure to develop the IEP.
49. Failure to implement the IEP.
50. Failure to implement the IEP's behavioral plan.

51. Failure to provide instructional aide.
52. Appropriate placement.
53. Failure to provide FAPE.
54. Failure to provide timely evaluations.
55. Failure to develop an appropriate transition plan.
56. Placement in a private school at public expense.
57. Failure to implement the IEP.
58. Failure to develop an appropriate IEP.
59. Failure to provide necessary support services.
60. Failure to provide FAPE.
61. Reimbursement of cost for education in a private school.
62. Violation of due process rights with regard to:
    a. Comprehensive evaluations.
    b. Development and implementation of IEP.
    c. Implementation of behavior modification program.
    d. Least restrictive environment.
    e. Compensatory education.
63. Failure to properly identify the student.
64. Failure to develop an appropriate IEP.
65. Failure to provide an appropriate placement.
66. Reimbursement of cost for education in a private school.
67. Reimbursement of educational cost at a private school.
68. reimbursement of transportation cost to a private school.
69. Provision of related services in a private school.
70. Failure to conduct child find activities.
71. Failure to conduct multidisciplinary evaluations.
72. Failure to design and implement an appropriate IEP.
73. Appropriateness of placement.
74. Failure to provide necessary related services.
75. Failure to reimburse parents for related services.
76. Inadequate evaluations.
77. Change in placement without ARC.
78. Failure to comply with behavior management program.
79. Failure to provide appropriate placement.
80. Failure to conduct an appropriate evaluation.

Table 2. Categories of Hearing Issues by their Frequencies and percentages

Issue	Frequency	Percentage
Placement	19	61
IEP	16	52
Evaluation	11	35
Private school	10	32
Behavior modification program	7	23
LRE	7	23
FAPE	4	13
Suspension/expulsion	3	10
Child Find	2	6
Compensatory education	1	3